

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

JETHRO L. LARKIN II,
Plaintiff,

No. C-12-2482 TEH (PR)

ORDER OF DISMISSAL

v.

TANA STILL,
Defendant.

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Plaintiff, a California state prisoner incarcerated at California Correctional Institution in Tehachapi, California, commenced this action when he filed a 7-page letter with the Court on May 16, 2012 wherein he complained generally of missing property (Doc. #1 at 2, 4), retaliation for exercising his rights (id. at 5), and interference with his legal mail (id. at 5). The Court cannot act on informal letters, documents, narratives, requests, etc. Consequently, on the same day the letter was filed, the Clerk notified Plaintiff that he not filed a complaint and mailed to Plaintiff the Court's form complaint for prisoner civil rights actions under 42 U.S.C. § 1983. Doc. #2.

1 On June 4, 2012, Plaintiff filed a formal complaint.
2 Doc. #4. In this formal complaint, Plaintiff raises a new claim
3 that was not raised in his initial letter, and names as a defendant
4 a correctional officer that was not referenced in his initial
5 letter. Specifically, Plaintiff alleges that on February 22, 2012,
6 correctional officer Tana Still interfered with Plaintiff's attempts
7 to complete his in forma pauperis application and caused Plaintiff
8 wrong and harm through her words and actions. Doc. #4 at 5-7, 14.
9 Plaintiff seeks a letter of apology from defendant, general damages
10 of \$275,000.00, compensatory damages of \$500,000.00, and punitive
11 damages of \$1,250,000.00. Id. at 14.

12 This formal complaint is the operative complaint, and
13 therefore the Court must assume that Plaintiff no longer seeks
14 relief for the claims raised in his initial letter, which arose from
15 distinct and unrelated incidents, and were asserted against a
16 variety of different defendants. Federal joinder rules prohibit
17 joining multiple claims and multiple defendants in a single action.
18 See Fed. R. Civ. P. 18(a) ("A party asserting a claim, counterclaim,
19 crossclaim, or third-party claim may join, as independent or
20 alternative claims, as many claims as it has against an opposing
21 party."), 20(a)(2) (multiple parties may be joined as defendants in
22 one action only "if any right to relief is asserted against them
23 jointly, severally, or in the alternative with respect to or arising
24 out of the same transaction, occurrence, or series of transactions
25 or occurrences; and any question of law or fact common to all
26 defendants will arise in the action."). If Plaintiff wishes to seek

1 pauperis application and caused Plaintiff wrong and harm through her
2 words and actions. Plaintiff fails to state a claim for relief
3 under § 1983.

4 The record contradicts Plaintiff's claim that defendant
5 prevented him from filing his in forma pauperis application;
6 Plaintiff filed a complete in forma pauperis application on June 4,
7 2012 and June 6, 2012. Doc. ## 5 and 7.

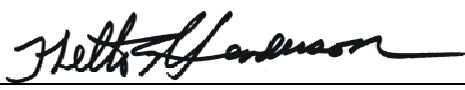
8 Additionally, allegations of verbal harassment and abuse
9 fail to state a claim cognizable under 42 U.S.C. § 1983. See
10 Freeman v. Arpaio, 125 F.3d 732, 738 (9th Cir. 1997) overruled in
11 part on other grounds by Shakur v. Schriro, 514 F.3d 878, 884-85
12 (9th Cir. 2008); Keenan v. Hall, 83 F.3d 1083, 1092 (9th Cir. 1996),
13 amended 135 F.3d 1318 (9th Cir. 1998) (disrespectful and assaultive
14 comments by prison guard not enough to implicate 8th Amendment);
15 Oltarzewski v. Ruggiero, 830 F.2d 136, 139 (9th Cir. 1987)
16 (directing vulgar language at prisoner does not state constitutional
17 claim).

18 II

19 For the reasons set forth above, Plaintiff's complaint is
20 DISMISSED with prejudice for failure to state a claim. The clerk
21 shall deny all pending motions as moot and close the file.

22 IT IS SO ORDERED.

23 DATED 06/18/2012

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THELTON E. HENDERSON
United States District Judge

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